

**REMARKS/ARGUMENTS**

Reconsideration and allowance of this application are respectfully requested. Currently, claims 1-7, 9-10, 15 and 17-20 are pending in this application.

**Rejection Under 35 U.S.C. §112:**

Claims 1-7 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Applicant respectfully submits that each of the limitations of claim 1 (specifically identified by the Office Action) now has a proper antecedent basis. Applicant thus respectfully requests that the rejection of claims 1-7 under 35 U.S.C. §112 be withdrawn.

**Rejection Under 35 U.S.C. §101:**

Claim 9 was rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Applicant respectfully traverses this rejection.

The Office Action alleges that the invention required by claim 9 is directed to non-statutory matter because at least some of its elements “can be reasonably interpreted by one of ordinary skill in the art as software, per se....” Applicant respectfully disagrees. Claim 9 explicitly requires “A mobile communications terminal.” Accordingly, claim 9 clearly falls within one of the four enumerated categories of patentable subject matter recited in 35 U.S.C. §101 (e.g., a machine). Moreover, the mobile communications terminal required by claim 9 clearly provides a practical application that produces a useful, tangible and concrete

result. Namely, a mobile communications terminal enables data transmission/reception with a communication network. The “mobile” nature of this communications terminal allows a user to transmit/receive data to/from the communications network from different locations.

The mobile communications terminal required by claim 9 includes elements such as means for transmitting and receiving data, an interface configured for simultaneous communication, and a control means. The means plus function elements recited in claim 9 are to be interpreted in view of corresponding structure in the specification and equivalents thereof. Clearly, these elements are directed toward statutory subject matter. Applicant thus respectfully requests that the rejection of claim 9 under 35 U.S.C. §101 be withdrawn.

**Rejections Under 35 U.S.C. §102 and §103:**

Claims 1-5, 9-10, 15 and 17-20 were rejected under 35 U.S.C. §102(a) as allegedly being anticipated by Zhao et al (hereinafter “Zhao”). Applicant respectfully traverses this rejection.

For a reference to anticipate a claim, each element must be found, either expressly or under principles of inherency, in the reference. Each element of the claimed invention is not found in Zhao. For example, Zhao fails to disclose “wherein the mobile terminal sends to the home agent information about the types of networks to which the mobile terminal is currently connected, the available bandwidth for each type of network to which the mobile terminal is currently

connected, and the mobile host's care-of address applicable for each type of network to which the mobile terminal is currently connected, the home agent selecting an appropriate network and its applicable care-of address based on the available bandwidth for each type of network to which the mobile terminal is currently connected" as required by independent claim 1 and its dependents. Similar (but not necessarily identical) comments apply to independent claims 9, 10 and 15.

Through the above-identified claim feature, exemplary embodiments of the present invention relate to a mobile terminal sending information to a home agent about the types of networks to which it is connected, the available bandwidth for each type of network, and the mobile host's care-of address applicable for each type of network. Fig. 6 and page 9, line 8 to page 10, line 30 of the originally-filed application support these features. The home agent then selects one of the networks based upon the bandwidth available for each type of network so that the selected network's applicable care-of address to the mobile terminal can be used.<sup>1</sup> This feature is supported by, for example, page 11, lines 14-30 of the originally-filed specification. For example, the "best" network may be selected by the home agent by comparing bandwidths of the networks and selecting the network with

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<sup>1</sup> Page 10, lines 6-9 of Applicant's Amendment/Response filed January 19, 2006 erroneously indicated that "The mobile terminal then selects one of the networks based on the bandwidth available...(emphasis added)." Applicant wishes to correct this misstatement describing exemplary embodiments of the present invention. It is the home agent which makes the selection of one of the networks based on the available bandwidth. (See pg. 2, lines 15-18; pg. 4, lines 3-8; and pg. 9, line 7 to pg. 11, line 30 of the specification).

the highest bandwidth. The mobile host's care-of address applicable to the selected network can then be used.

In contrast to the home agent selecting a network and its applicable care-of address based on the available bandwidth for each type of network to which the mobile terminal is connected, Zhao discloses "Packets are intercepted by the home agent and are tunneled to the care-of address selected based on the packets' destination address, source address and source port (emphasis added)." (See the caption of Fig. 5 of Zhao). A mobile host may choose to receive the packets belonging to a given flow on any of its interfaces by sending a flow-to-interface binding to its home agent. This flow-to-interface binding specifies the mobile host's care-of address(es) that the home agent should use to forward packets belonging to the flow. A home agent stores the received flow-to-interface binding in an extended binding list. Thereafter, the home agent receives a packet addressed to a mobile host, searches its extended binding list for an entry matching the corresponding fields of the packet (destination address, source address and source port) and forwards the packet to the associated care-of address designated in the extended binding list.

There is no disclosure of Zhao's flow-to-interface binding sent from Zhao's mobile host to the home agent having information relating to the available bandwidth for each type of network to which a mobile terminal is currently connected for enabling the home agent to select an appropriate network and its

applicable care-of address based on the available bandwidth. Indeed, Zhao's abstract explicitly discloses (in describing Zhao's system) "The other mechanism enables a mobile host to make use of multiple active network interfaces simultaneously and to control the selection of the most desirable network interfaces for both outgoing and incoming packets for different traffic flows." Similarly, the third paragraph of section 5.3.1 of Zhao states "In our framework, a mobile host may choose to receive the packets belonging to a given flow on any of its interfaces by sending a Flow-to-Interface binding to its home agent. This Flow-to-Interface binding specifies the mobile host's care-of address(es) that the home agent should use to forward packets belonging to the flow." Zhao thus discloses that it is the mobile host which instructs the home agent which network to use. (See also the discussion of Zhao provided on page 1, line 20 to page 2, line 2 in the background section of the present application). In contrast, page 2, lines 15-18 of the specification (as amended) states, "One advantage of the present exemplary embodiments of the invention is that the routing of the data to the mobile terminal is performed by the home agent rather than the mobile terminal, making the terminals less complex, which should lead to smaller, cheaper terminals which have lower power consumption." While Zhao discloses a mobile host instructing a home agent which network to use, exemplary embodiments of the present invention enable a home agent to select an appropriate network from

information relating to available bandwidth of each type of network to which a mobile terminal is selected from a mobile terminal.

Pages 8-9 of the Office Action allege that sections 9 and 5.1 of Zhao disclose the above-noted claim limitations. Applicant respectfully disagrees. While section 9 of Zhao discloses “A kernel module will be responsible for automatically selecting the most suitable interface to use for each flow according to the QoS specified,” this teaching does not disclose a mobile terminal sending to the home agent information about the available bandwidth for each type of network to which the mobile terminal is currently connected, the home agent selecting an appropriate network and its applicable care-of address based on the available bandwidth for each type of currently connected network. Indeed, section 9 states “For this, we have added two new socket options and have extended the Mobile IP protocol with new registration extensions so that a mobile host has more control over which interface to use to send and receive packets (emphasis added).” As described in other portions of Zhao, Zhao thus describes the mobile host determining which of the network interfaces to use, not the home agent. If anything, section 9 thus teaches away from the mobile terminal sending to the home agent information relating to the available bandwidth of each type of network to which the mobile terminal is currently connected and corresponding care-of addresses to the extent that it is the mobile host which selects the most suitable interface, not the home agent in Zhao. Applicant further notes that there

is no specifications of the QoS identified in section 9. That is, a QoS may guarantee a measure of performance for a transmission system based on specifications other than bandwidth such as latency, jitter and/or error rate. The absence of any element of the claim from the cited reference negates anticipation. See, e.g., *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715 (Fed. Cir. 1984).

Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. §102 over Zhao be withdrawn.

Claims 6-7 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Zhao in view of Kikinis (U.S. '410). Since claims 6-7 depend from claim 1, all of the comments made above with respect to Zhao apply equally to these claims. Kikinis fails to remedy the above-described deficiencies of Zhao. Applicant respectfully requests that the rejection of claims 6-7 under 35 U.S.C. §103 be withdrawn.

***TITMUSS et al.***  
***Application No. 09/868,221***  
***September 5, 2006***

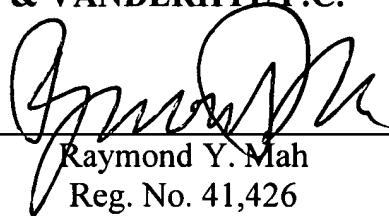
**Conclusion:**

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_



Raymond Y. Mah  
Reg. No. 41,426

RYM:sl  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4044  
Facsimile: (703) 816-4100